53 Box 11 - JGR/Comparable Worth (3) - Roberts, John G.: Files
SERIES I: Subject File

WITHDRAWAL SHEET

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Collection Name Roberts, John

Withdrawer LOJ 8/9/2005

File Folder JGR/COMPARABLE WORTH (3 OF 3)

FOIA F05-139/01 COOK

Box Number 40LOJ

Doc No	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	LIST	OF "NOT ASKED YET" ITEMS	1	2/24/1984	B6	1127
2	LIST	OF "NEED FOLLOW-UP"	1	2/24/1984	B6	1128
3	LIST	DRAFT OF POSSIBLE SUBJECTS OF QUESTIONS IN MEESE CONFIRMATION HEARINGS	2	2/16/1984	B6	1129

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Comparable Worth Decision

° On December 14, 1983, the United States District Court for the Western District of Washington (Tanner, J.) issued an opinion embracing the concept of "equal pay for work of comparable worth," ruling in favor of female employees who had filed a suit against the State of Washington. The State is appealing to the Ninth Circuit; the Department of Justice, which was not involved below, is considering whether to intervene.

° The concept of "Equal pay for work of comparable worth" goes beyond "equal pay for equal work." The Administration clearly supports "equal pay for equal work." The comparable worth theory, however, contends that discrimination exists because workers in jobs held primarily by women are paid less than workers in jobs held primarily by men, even though -- supporters of the theory argue -- the jobs are somehow "worth" the same. "Equal pay for equal work" requires that female truck drivers be paid the same as male truck drivers. The comparable worth theory, however, would require that laundry workers -- mostly female -- be paid the same as truck drivers -- mostly male -- because their jobs are "worth" about the same.

° Supporters of the theory note that women in the work-force still only earn about $0.60 for every dollar earned by men, and contend that this is the result of systematic depression of wages in jobs held primarily by women.

° Opponents respond that the disparity in gross wage rates is not caused by discrimination but is due to the fact that women frequently leave the workforce for extended periods of time (primarily to have and raise children), and the fact that seniority favors men simply because they have been in the workforce longer than most women. Opponents also contend that it is impossible to assess the "worth" of disparate jobs, and that for judges to attempt to do so -- and to dictate wage rates based on their evaluation -- would constitute a radical departure from the open market system of setting wage rates in a free economy. Further, those opposed to the comparable worth theory note that Congress considered and rejected the theory in the course of passing both the Equal Pay Act and Title VII.

° The question of whether the United States should intervene in the case is currently being considered within the Justice Department. It would, accordingly, be inappropriate for the President to express any views at this time.

Grove City College Decision

° On February 28, 1984, the United States Supreme Court issued its opinion in Grove City College v. Bell. The case raised the question whether Federal grants to students constituted "Federal financial assistance" to colleges attended by those students, thereby triggering the coverage of Title IX. Title IX prohibits discrimination on the basis of gender in programs receiving "Federal financial assistance."

° The Justice Department argued that Federal grants to students did trigger the coverage of Title IX. The Supreme Court agreed. The Supreme Court's acceptance of the Justice Department's position thus represents a major victory in the fight against sex discrimination, by establishing that Title IX coverage is triggered by student grants.

° The case also raised the question of how broadly Title IX applied, once it was established that the statute was triggered by student grants. The Justice Department argued, and the Supreme Court agreed, that student grants triggered Title IX coverage of the student financial aid program, not the institution as a whole. This conclusion was compelled by the so-called "program specificity" requirement Congress wrote into Title IX when it drafted that statute.

° If asked about Grove City, the President can state that he was pleased that the Supreme Court agreed with the Justice Department that student grants triggered coverage of Title IX. That was the main issue in the case. While some women's groups are upset about the Court's decision limiting coverage to the financial aid program, that limitation is compelled by the program specificity requirement in the statute.

° If asked if he would support an effort to overturn the program specificity requirement in Congress, the President should be non-committal, saying he would have to wait and see what Congress proposes before commenting.

Comparable Worth Decision

° On December 14, 1983, the United States District Court for the Western District of Washington (Tanner, J.) issued an opinion embracing the concept of "equal pay for work of comparable worth", ruling in favor of female employees who had filed a suit against the State of Washington. The State is appealing to the Ninth Circuit; the Department of Justice, which was not involved below, is considering whether to intervene.

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° The question of whether the United States should intervene in the case is currently being considered within the Justice Department. It would, accordingly, be inappropriate for Mr. Meese to express any views on the matter, not only because it is the subject of pending litigation but also because any expression of views by Mr. Meese at this stage could disrupt the careful consideration of the legal issues by the Justice Department.

FCC Syndication and Financial Interest Rule Controversy

° On September 28, 1983, FCC Chairman Mark Fowler met in the Oval Office with the President and several other Administration officials (including Mr. Meese) to discuss the issues surrounding the FCC syndication and financial interest rule. Some have alleged that the meeting was improper, because the FCC, an independent regulatory agency, was considering whether to repeal the rule.

° The syndication and financial interest rule prohibits the three television networks from financing production of television programs or otherwise becoming involved in program syndication. It was intended to prevent the three networks from acquiring excessively dominant positions in the production business, the theory being that networks would only show programs in which they had a financial interest. The issue generated a major debate between the networks (favoring repeal) and the major production studios and Hollywood establishment (opposing repeal). The FCC in fact decided to repeal the rule, partly on the ground that developments such as cable television eroded the potential for network dominance.

° The Department of Justice, Department of Commerce, and the FTC supported repeal. After announcement of the FCC decision, however, the Administration supported a legislative moratorium on repeal to provide an opportunity for further study of the issues.

° There was nothing improper about Fowler's meeting with the President. Fowler requested the meeting to brief the President on the issues; the meeting was not requested by the President and was not used to pressure the FCC in any way. The question of repeal of the rule raised broad policy issues beyond any pending matter before the FCC, and it is not inappropriate for the President to meet with independent regulators on such issues.

° No fair observer can say the meeting affected the FCC decision. At the time of the meeting the FCC had already announced a tentative decision in favor of repeal, and that was its final decision.

Wick Taping

° Early this year, it became known that Charles Z. Wick, head of the United States Information Agency, taped telephone conversations without advising the other party to the conversation.

° Wick explained that he recorded conservations solely to facilitate appropriate follow-up and ensure accuracy, and that the recording was an outgrowth of his practice of using a dictaphone to record his own thoughts and directives to subordinates. He has ceased the practice and apologized to all concerned.

° Recordingly telephone conversations without the consent of the other party is not illegal under Federal law, nor under the law of the District of Columbia. It is illegal in a minority of States. Such recording on government telephones is, however, a violation of GSA regulations, except in certain limited circumstances. USIA and GSA are now working on means of securing effective implementation of the GSA regulations.

° Mr. Meese can state, if asked, that he does not approve of the practice of recording conversations without the consent of all parties, and that he neither has engaged nor would engage in the practice. The Administration has announced that it does not condone such recording. This policy, of course, does not apply to legitimate law enforcement or national security activities (such as wiretaps) conducted within the limits imposed by the Fourth Amendment and other applicable guidelines.

White Collar Crime

° The Administration remains firmly committed to the investigation and prosecution of so-called "white collar crime." The effort to expand the Justice Department's role in the fight against violent crime in no way signals a lessened commitment to fighting white collar crime.

° The focus on organized crime cases, and following the "money trail" in high-level drug cases, are examples of successful initiatives in the white collar crime area. So is the criminal prosecution of contractors for bid-rigging, an effort that has resulted in many convictions with jail time.

° The Department is also very active in the area of public corruption cases.

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THE WHITE HOUSE

WASHINGTON

March 26, 1984

Dear Ms. Carpenter:

Thank you for your letter to the President concerning the Washington State comparable worth case. That letter has been referred to this office by Lee L. Verstandig, Assistant to the President for Intergovernmental Affairs. In that letter you urged that the Administration intervene in the case in support of the decision below.

I trust you will understand that, as a matter of policy, the White House refrains from commenting upon pending litigation. I can advise you, however, that the question of possible involvement by the United States in the comparable worth case is being reviewed within the Department of Justice. Any decision reached by that Department will of course be based on the merits of the case without regard to political considerations.

We appreciate having the benefit of your views on this question.

Sincerely,

John G. Roberts
Associate Counsel to the President

The Honorable Dorothy Carpenter
Member of the House of Representatives
of the State of Iowa
Des Moines, Iowa 50319

THE WHITE HOUSE

WASHINGTON

March 26, 1984

Dear Ms. Hoffman-Bright:

Thank you for your letter to the President concerning the Washington State comparable worth case. That letter has been referred to this office by Lee L. Verstandig, Assistant to the President for Intergovernmental Affairs. In that letter you urged that the Administration intervene in the case in support of the decision below.

I trust you will understand that, as a matter of policy, the White House refrains from commenting upon pending litigation. I can advise you, however, that the question of possible involvement by the United States in the comparable worth case is being reviewed within the Department of Justice. Any decision reached by that Department will of course be based on the merits of the case without regard to political considerations.

We appreciate having the benefit of your views on this question.

Sincerely,

John G. Roberts
Associate Counsel to the President

The Honorable Betty Hoffman-Bright
Member of the House of Representatives
of the State of Iowa
Des Moines, Iowa 50319

THE WHITE HOUSE

WASHINGTON

March 26, 1984

Dear Ms. Clark:

Thank you for your letter to the President concerning the Washington State comparable worth case. That letter has been referred to this office by Lee L. Verstandig, Assistant to the President for Intergovernmental Affairs. In that letter you urged that the Administration intervene in the case in support of the decision below.

I trust you will understand that, as a matter of policy, the White House refrains from commenting upon pending litigation. I can advise you, however, that the question of possible involvement by the United States in the comparable worth case is being reviewed within the Department of Justice. Any decision reached by that Department will of course be based on the merits of the case without regard to political considerations.

We appreciate having the benefit of your views on this question.

Sincerely,

John G. Roberts
Associate Counsel to the President

The Honorable Betty J. Clark
Member of the House of Representatives
of the State of Iowa
Des Moines, Iowa 50319

THE WHITE HOUSE

WASHINGTON

March 26, 1984

Dear Ms. Mullins:

Thank you for your letter to the President concerning the Washington State comparable worth case. That letter has been referred to this office by Lee L. Verstandig, Assistant to the President for Intergovernmental Affairs. In that letter you urged that the Administration intervene in the case in support of the decision below.

I trust you will understand that, as a matter of policy, the White House refrains from commenting upon pending litigation. I can advise you, however, that the question of possible involvement by the United States in the comparable worth case is being reviewed within the Department of Justice. Any decision reached by that Department will of course be based on the merits of the case without regard to political considerations.

We appreciate having the benefit of your views on this question.

Sincerely,

John G. Roberts
Associate Counsel to the President

The Honorable Sue Mullins
Member of the House of Representatives
of the State of Iowa
Des Moines, Iowa 50319

White House Counsel

ID# 196474

NOTE: Please send each signer a letter. - 4 letters.

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

John - Clerk

INCOMING

DATE RECEIVED: FEBRUARY 09, 1984

NAME OF CORRESPONDENT: THE HONORABLE BETTY J. CLARK

SUBJECT URGES INTERVENTION IN SUPPORT OF THE JUDGE'S RULING IN THE WASHINGTON STATE COMPARABLE WORTH CASE

ROUTE TO: OFFICE/AGENCY (STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
ROBERT GLEASON	ORG	84/02/09	LV	A	84/03/06
REFERRAL NOTE: VCU FIEL					
REFERRAL NOTE:	A	84/02/24			/ /
REFERRAL NOTE: WAT 18	R	84/03/22		S	84/04/03
REFERRAL NOTE:		/ /			/ /
REFERRAL NOTE:		/ /			/ /
REFERRAL NOTE:		/ /			/ /

COMMENTS: Acknowledgment sent to all signers

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 2200 ____ ___

IA MAIL USER CODES: (A)_____ (B)_____ (C)_____

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*ACTION CODES:          *DISPOSITION CODES:    *OUTGOING              *
*                       *                      * CORRESPONDENCE       *
*A-APPROPRIATE ACTION   *A-ANSWERED            *TYPE RESP=INITIALS    *
*C-COMMENT/RECOM        *B-NON-SPEC-REFERRAL   *          OF SIGNER   *
*D-DRAFT RESPONSE       *C-COMPLETED           *     CODE = A         *
*F-FURNISH FACT SHEET   *S-SUSPENDED           *COMPLETED = DATE OF   *
*I-INFO COPY/NO ACT NEC*                       *             OUTGOING *
*R-DIRECT REPLY W/COPY  *                      *                      *
*S-FOR-SIGNATURE        *                      *                      *
*X-INTERIM REPLY        *                      *                      *
**********************************************************************
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REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT. 2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

file: comparable worth

DATE: 1-27-

The Washington Post

PAGE: C1

Forcing Equal Pay for Different Work Is a Bad Idea

By William French Smith

COMPARABLE WORTH, or equal pay for *different* work, is emerging as one of the most controversial labor issues of the 1980s. On Jan. 3, legislation was introduced in Congress to authorize a study of alleged pay disparities between civil service jobs held mainly by men and ones primarily performed by women. A similar bill was passed last year by the House.

Legislatures in several states, including Minnesota and Iowa, have recently passed measures seeking the adoption of comparable worth in state pay practices. Legislatures in a number of other states including Nevada, Rhode Island and Virginia have either authorized or passed resolutions calling for comparable worth studies of state employment. In California, Connecticut, Hawaii and Illinois, public employes are in federal court, charging their employers (in most cases, the states) with violations of federal law that they believe already requires equal pay for jobs of allegedly comparable value.

Meanwhile, in New Haven, Conn., the comparable worth movement has made its most publicized stand in the private sector. Seeking more pay in contract negotiations with Yale University, the school's clerical and technical workers, who are predominantly female, have publicly couched their demands in terms of the equal pay for different work debate. For example, it was said that Yale's administrative assistants, who are mostly female and make on average $13,424, do work at least as valuable to the university as its truck drivers, who are mostly men and make on average $18,470.

William French Smith is attorney general of the United States.

Comparable worth has gained a degree of popularity in some circles. But in our view, comparable worth cannot be justified on any ground — legal, economic or policy. It does not merit adoption by the public sector, and one can be sure of this: It would enter the private sector only by government mandate.

What is comparable worth, and why is it said that we need it? Contrary to what its advocates say, comparable worth is *not* the same as equal pay for equal work. Equal pay for equal work means that two printers, one male and one female, who do the same work for the same employer, should be paid the same. The Equal Pay Act of 1963 affirms this principle of basic fairness. No one questions its validity, and this administration wholeheartedly supports it.

Comparable worth incarnates a far different principle — that two jobs, one performed mostly by women, the other mostly by men, which are not identical but are alleged to be "comparable" in value to employers or society, should pay the same wage.

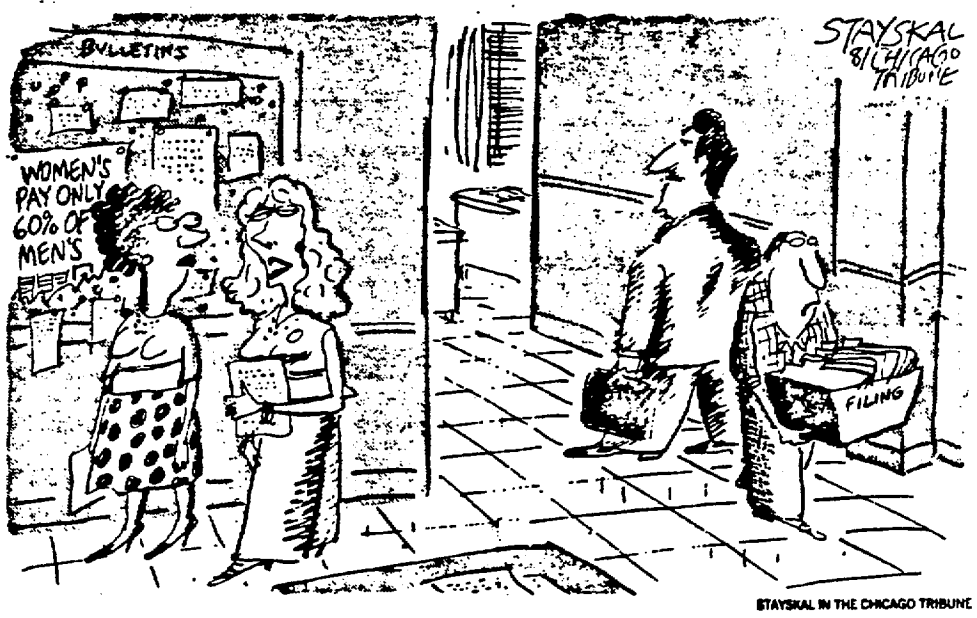
In a case pending in a federal district court in Michigan, for example, secretaries, almost all of whom are female and are paid $12,882 to $16,432 annually, are said to perform jobs of as much worth as those held by maintenance mechanics, who are all male and earn from $15,868 to $19,961 a year. Not equal pay for equal work but equal pay for work of allegedly comparable worth — indeed, different work — that is the idea involved.

Comparable worth proponents note that jobs traditionally held by women — nursing, secretarial and other office jobs, for example — have paid less than those traditionally performed by men, such as plumbing, engineering and maintenance.

They argue that the "female" jobs are worth at least as much to employers or society as the "male" ones. The explanation for the difference in pay, they assert, must be sex-based discrimination. Ratcheting salary schedules upwards so that the famale jobs are paid a much as the male ones is the remedy proposed by advocates of comparable worth.

Thus, in a case pending in the U.S. District Court for the District of Oregon, it has been alleged that university teachers in the "female" fields of nursing, dental hygiene, secretarial science, business education and teacher education should be paid as well as those in the "male" fields of medicine, dentistry, business administration and education administration.

Congress has never passed a law



STAYSKAL IN THE CHICAGO TRIBUNE

"And just guess which one's salary we're getting 60 percent of?"

Cont.

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mandating comparable worth in any form or fashion, yet the federal judiciary, as in the Michigan and Oregon examples, is being invited to read comparable worth into Title VII of the Civil Rights Act of 1964, which states that it is unlawful for an employer "to discriminate against any individual with respect to his compensation . . . because of such individual's sex." A comparable worth interpretation of Title VII, however, does not square with the intent of the law.

Title VII can be understood only in light of the Equal Pay Act of 1963. In passing that law, Congress thoroughly considered and specifically *rejected* proposals covering jobs of a "comparable" character. Instead, Congress drew a circle around the one area where discriminatory treatment could reasonably be presumed — men and women doing the same work but receiving unequal pay — and outlawed such differentials.

The Equal Pay Act was just that — a guarantee that equal work would be equally compensated. There is nothing in the record to suggest that this sense of Congress changed during the subsequent months as it debated and passed into law Title VII.

So far, only one federal court, in the Western District of Washington, has gone beyond the intent of Title VII by adopting a comparable worth interpretation. Last year, in a much-discussed case brought by the American Federation of State, County and Municipal Employes against the State of Washington, that court found the state liable for sex-biased pay discrimination against women under Title VII. The court ordered the state to increase the salaries of all employes, male and female, in jobs held mostly by women, to levels commensurate with their rating in a state-sponsored comparable worth study conducted in 1973.

The AFSCME case is now pending before the U.S. Court of Appeals for the Ninth Circuit, which in 1984 rejected a comparable worth claim by the predominately female nursing faculty of the University of Washington. The Supreme Court decided not to review this decision, thus leaving interpretation of the law, for the moment, in the hands of the circuit courts of appeals. To date, the six courts of appeals to rule on comparable worth claims have unanimously rejected them.

Not only is comparable worth not the law, it plainly shouldn't be. Comparable worth would reverse the long overdue trend toward more cost-efficient government and freer labor markets. In the public sector, comparable worth would only further reduce, if not eliminate altogether, the influence of the marketplace on determining the pay of civil servants. Applied to the private sector, comparable worth would dramatically increase government influence upon the workings of the marketplace by disrupting the current mixed system of supply and demand (including the effects of competition from abroad), collective bargaining contracts and state and federal rules (such as the minimum-wage law) that determine private sector pay.

Comparable worth is plainly a very bureaucractic and most expensive proposition. At the federal level, no existing bureaucracy has the time or manpower even to attempt an implementation of comparable worth. A new agency would have to be created, and it would dictate "comparability" standards, order subsequent adjustments and oversee the implementation of every jot and tittle of its various commands. The regulation comparable worth implies for the private sector would exceed the scope and influence of any it currently experiences.

In the public sector, comparable worth costs would be passed on to the already overburdened taxpayers; if the decision in the AFSCME case is not reversed, the cost to the state of Washington (read: Washington taxpayers) is reliably estimated to be $400 million in the first year of implementation and $60 million ever year thereafter. In the private sector, comparable worth costs also would be passed on to the taxpayers in the form of higher prices.

This might not be the only cost. With the price of certain types of labor increased by government fiat, employers might well decide to buy less of that labor. Employment in areas affected by comparable worth decisions would then decline, as would total output. The darkness one sees at the end of the comparable worth tunnel is economic decline.

No one can seriously consider comparable worth without reflecting on the practical problems it would raise. A comparable worth bureaucracy — made up of governmnt officials, lawyers and judges — would determine which jobs are, in effect, "male" and which "female." But is a "male" or "female" job one in which 70 percent of those performing the job are men or women, as one comparable worth proponent has said? Why not 80 percent, as another comparable worth study concludes? For that matter, why not 90? Why not 60? Or 69, or 71? And what happens when, whatever percentage is chosen, it begins to slip? Is the job in quetion still a "male" or "female" job?

Further, there is the problem of figuring out the "worth" of each job. How does one say which job is worth more or less than another one? Obviously, one person's criteria for job "worthiness" may not be another's. And it is hardly clear how the criteria of any person who has the task of determining the value of jobs should be evaluated. Not only the criteria, but also the weight assigned to each criterion, are subjective matters.

Most fundamentally, there is the question of who is to make all of these determinations. Who is to say which jobs are "male" or "female," which jobs are "worth" more than others, how many points to assign to this job as opposed to that one and how then to evaluate the points assigned? And why should anyone want to give these arbitrary tasks to government bureaucracies? Who is government to say that administrative assistants and truck drivers, or nurses and mechanics, should be paid the same? It is not clear that government would determine pay scales in a more competent manner than now exists. Moreover, only the naive could suppose that comparable worth bureaucracies would be unaffected by political considerations as they assign points and evaluate jobs.

Comparable worth is an idea rich in irony. Advanced in the name of women's equality, it would require government's labeling some jobs as "male" and others as "female." Furthermore, those who would benefit from comparable worth would be, as the Washington state case illustrates, not only the females who fill "female" jobs, but also the males in those jobs. Com-

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Cont

parable worth, whatever else may be said against it, is overinclusive in terms of those who would benefit from it.

There is also the irony that comparable worth, if implemented, would reduce the incentives for women to move out of jobs traditionally held by their sex into those long held by men.

The increased pay in traditionally female jobs would encourage women to stay in those jobs and could lead to an oversupply of workers for certain occupations.

A case pending in federal court in Illinois demonstrates the far-from-unreasonable fear of some women that comparable worth could even reduce the salaries paid to women who move into "male" occupations. In a complaint brought by the American Nurses Association and others against the state of Illinois, it is alleged that the state uses "a sex-biased system of pay and classification which results in and perpetuates discrimination in compensation" against those employed in occupations historically held mostly by women, such as nursing, health technician, switchboard operator and clerk typist. The complaint cites an official study commissioned by the state concluding that "female" jobs possess greater value than certain "male" jobs and are paid less. For example, the study rated nurse IV above electrician, but the nursing job pays an average monthly salary of $2,104 and the electrician job paid $2,826.

It is obvious, however, that many women in Illinois disagree with this study and indeed with the whole idea of comparable worth. Fifteen women, all of whom hold jobs traditionally performed by men, have recently asked the court for permission to join the state as *defendants*. According to the state's comparable worth study, the jobs these women hold — as correctional officers, a security officer, an accountant and an office manager — should be, in effect, devalued. These women believe that if the decision in this case requires the implementation of the comparable worth study, their pay checks will be smaller.

In their filing with the court these 15 women deny "that they are beneficiaries of sex discrimination, or are overpaid. . . . On the contrary, any favorable salary positions they enjoy relative to [the plaintiffs] are the result of special skill, hard work and the nondiscriminatory forces of supply and demand."

The group of women also states "a direct interest" in preserving the present system of compensation, which "rewards them for their special skills; their performance of particularly difficult, dangerous or unpleasant work, and their willingness to challenge stereotypes and perform jobs traditionally occupied by males."

These Illinois women represent the healthy trend of the past two decades, during which the work force has become more and more integrated, with women making dramatic inroads into jobs traditionally held by men. One reason for this trend, no doubt, is the very willingness of many women to "challenge stereotypes and perform jobs traditionally occupied by males."

Surely there is no reason to change this trend by jettisoning current public policy in favor of comparable worth. Aggressive enforcement of Title VII to ensure women equal employment opportunties, combined with vigorous enforcement of the Equal Pay Act, remains the best means of securing the great goal of equal employment opportunity and equitable employer treatment for all Americans, regardless of sex.